

391909

OST-2006-24899-3

MEMORANDUM FOR BOARD ACTION  
BDA-200 Series

CIVIL AERONAUTICS BOARD

MEMORANDUM

MAY 1482 501-A

REC'D MINUTES SEC

MAY 14 1982

MEMORANDUM

TO : The Board

FROM : Bureau of Domestic Aviation

SUBJECT : Employee Protection Program: Applications on Behalf of Employees of Aeroamerica (Dockets 38885 and 38979); Airlift International (Dockets 38418, 40342 and 40352); Air New England (Dockets 40201, 40251, 40349, 40529 and 40530); American (Dockets 38570 and 39115); Braniff (Dockets 38978 and 40280); Continental (Dockets 38720, 38816 and 39524); Delta (Docket 39700); Eastern (Docket 38586); Mackey International (Docket 39783); Overseas National (Dockets 34562 and 34711); Pan Am (Dockets 38883 and 40279); TWA (Dockets 38184, 38193, 38196, 38884, 39013 and 39032); and United (Dockets 38571, 38882 and 39525) for Determination of Qualifying Dislocation. Staff Recommendation: Issue the attached draft order: (1) consolidating the 33 applications into 13 dockets, one for each carrier; (2) serving the applications on the carriers, collective bargaining representatives, Secretary of Labor, the Secretary of Transportation, and any State agencies that are acting as agents of the Secretary of Labor to administer the Employee Protection Program, allowing 15 days for answers; (3) finding that Airlift, Air New England, American, Braniff, Continental, Mackey International, Pan Am, TWA and United have experienced major contractions; (4) instituting individual investigations to determine whether those carriers have also suffered qualifying dislocations; (5) requiring additional employment data from American, Continental, Pan Am, and TWA; and (6) finding Eastern Airlines to be a close case, requiring additional employment data from the carrier.

REFERENCE: Section 43 of the Airline Deregulation Act of 1978, Public Law 95-504; Notice of Proposed Rulemaking, FDR-406/PDR-72, Docket 38483, July 17, 1980; 45 FR 49291, July 24, 1980, PR-245 and FR-1285, Docket 38483, Adopted November 18, 1981, effective April 3 and May 3, 1982, respectively; 47 FR 9744, March 5, 1982.

SUNSHINE ACT PROCEDURES

Open.

Memorandum for Coordination to B-30 and B-80

LEGAL AND POLICY ISSUES

This is the first draft order concerning the Employee Protection Program, section 43 of the Airline Deregulation Act. Of the 13 carriers under consideration, the draft order sets nine for investigation to determine whether qualifying dislocations of the carriers have occurred. After we receive answers from interested persons with regard to whether the major contractions amounted to qualifying dislocations, and after the staff performs its own analyses, the Board will have to decide whether to set any of the cases for oral evidentiary hearing.

DISCUSSION

Section 43 of the Airline Deregulation Act, entitled "Employee Protection Program," provides for Federal assistance payments, including relocation assistance, to qualified airline workers who have been deprived of employment or have had their compensation reduced because the air carrier employer has undergone a qualifying dislocation. A "qualifying dislocation" is defined in section 43(h)(2) of the ADA as a bankruptcy or major contraction in employment "the major cause of which is the change in regulatory structure provided by the Airline Deregulation Act of 1978." A "major contraction" is in turn defined as "a reduction by at least 7 1/2 percent of the total number of full-time employees of an air carrier within a 12-month period...[excluding reductions attributable to ] employees who are deprived of employment because of a strike or who are terminated for cause."

It is the responsibility of the Board to determine whether an air carrier has experienced a bankruptcy or major contraction and, if so, whether it has undergone a qualifying dislocation. We have received applications for "Determination of Qualifying Dislocation" on behalf of furloughed employees of 13 carriers. The attached draft order would declare major contractions for nine carriers, would find four of those carriers to also be mathematically close cases for some months requiring additional information, and would anticipate dismissing three applications. It is not clear whether one carrier, Eastern Airlines, experienced a major contraction. The draft order would therefore find that carrier to be a mathematically close case requiring that it supply additional employment data before a determination could be made.

*Steven B. Farbman*

Steven B. Farbman, B-72  
Ext. 35340

Attachment

Approved:

*BAC*  
Associate Director, B-73

5-13-82  
Date

*Barbara A. Clark*  
Director, BDA

5-13-82  
Date

DRAFT  
UNITED STATES OF AMERICA  
CIVIL AERONAUTICS BOARD  
WASHINGTON, D.C.

Adopted by the Civil Aeronautics Board  
at its office in Washington, D.C.  
on the            day of            , 1982

-----  
EMPLOYEE PROTECTION PROGRAM            :

Applications on Behalf of Employees    :  
of    :

AEROAMERICA                                :

Docket 38885

For Determination of Qualifying        :  
Dislocation.                                :

-----  
EMPLOYEE PROTECTION PROGRAM            :

Applications on Behalf of Employees    :  
of    :

AIRLIFT INTERNATIONAL                    :

Docket 38418

For Determination of Qualifying        :  
Dislocation.                                :

-----  
EMPLOYEE PROTECTION PROGRAM            :

Applications on Behalf of Employees    :  
of    :

AIR NEW ENGLAND                           :

Docket 40201

For Determination of Qualifying        :  
Dislocation.                                :

-----  
EMPLOYEE PROTECTION PROGRAM            :

Applications on Behalf of Employees    :  
of    :

AMERICAN AIRLINES                        :

Docket 38570

For Determination of Qualifying        :  
Dislocation.                                :  
-----

DRAFT  
DRAFT

DRAFT  
- 2 -

---

EMPLOYEE PROTECTION PROGRAM :  
: Applications on Behalf of Employees :  
of :  
: BRANIFF INTERNATIONAL AIRWAYS : Docket 38978  
: For Determination of Qualifying :  
Dislocation. :

---

---

EMPLOYEE PROTECTION PROGRAM :  
: Applications on Behalf of Employees :  
of :  
: CONTINENTAL AIRLINES : Docket 38720  
: For Determination of Qualifying :  
Dislocation. :

---

---

EMPLOYEE PROTECTION PROGRAM :  
: Application on Behalf of Employees :  
of :  
: DELTA AIR LINES : Docket 39700  
: For Determination of Qualifying :  
Dislocation. :

---

---

EMPLOYEE PROTECTION PROGRAM :  
: Application on Behalf of Employees :  
of :  
: EASTERN AIRLINES : Docket 38586  
: For Determination of Qualifying :  
Dislocation. :

---

DRAFT

DRAFT

DRAFT

-----  
EMPLOYEE PROTECTION PROGRAM :

Application on Behalf of Employees :  
of :

MACKEY INTERNATIONAL AIRLINES :

Docket 39783

For Determination of Qualifying :  
Dislocation. :

-----  
EMPLOYEE PROTECTION PROGRAM :

Applications on Behalf of Employees :  
of :

OVERSEAS NATIONAL AIRWAYS :

Docket 34562

For Determination of Qualifying :  
Dislocation. :

-----  
EMPLOYEE PROTECTION PROGRAM :

Application on Behalf of Employees :  
of :

PAN AMERICAN WORLD AIRWAYS :

Docket 38883

For Determination of Qualifying :  
Dislocation. :

-----  
EMPLOYEE PROTECTION PROGRAM :

Applications on Behalf of Employees :  
of :

TRANS WORLD AIRLINES :

Docket 38184

For Determination of Qualifying :  
Dislocation. :  
-----

DRAFT

DRAFT

DRAFT

---

EMPLOYEE PROTECTION PROGRAM :

Applications on Behalf of Employees of :

UNITED AIRLINES :

Docket 38571

For Determination of Qualifying Dislocation. :

---

ORDER

The Airline Deregulation Act (ADA), Public Law 95-504, was enacted on October 24, 1978. Section 43 of the ADA 1/ is entitled "Employee Protection Program." This program, which is to be administered by the Secretary of Labor, applies to certain employees of airlines that had been certificated as of the date of enactment of the ADA. It provides protection for airline employees (other than officers or members of the board of directors) who, as of the date of enactment of the ADA, had been employed by one carrier since October 24, 1974.

The program provides for Federal assistance payments, including assistance for relocation, to protected workers who have been deprived of employment or have had their compensation reduced because the air carrier employer has undergone a qualifying dislocation. A "qualifying dislocation" is defined in section 43(h) of the ADA as a bankruptcy or major contraction in employment "the major cause of which is the change in regulatory structure provided by the Airline Deregulation Act of 1978." A "major contraction" in turn is defined as "a reduction by at least 7 1/2 percent of the total number of full-time employees of an air carrier within a 12-month period...[excluding] employees who are deprived of employment because of a strike or who are terminated for cause." It is the responsibility of the Civil Aeronautics Board to determine whether an air carrier has experienced a bankruptcy or a major contraction 2/ and, if so, whether it has undergone a qualifying dislocation. If we determine that a carrier has undergone a qualifying

---

1/ 49 U.S.C. 1552.

2/ If circumstances indicate that a major contraction will occur, we may make an advance determination of a major contraction before the 7 1/2 percent figure is actually reached.

DRAFT

DRAFT

# DRAFT

dislocation, we will notify the Secretary of Labor, who will decide which employees of the carrier are eligible for monthly assistance benefits and relocation assistance, and the amounts of assistance to which they are entitled. Payments will be made by the Department of Labor. 3/

On July 17, 1980, we issued a notice of proposed rulemaking in which we proposed procedures for implementing our responsibilities under the Employee Protection Program. 4/ Although we accepted applications based upon the proposed procedures, we decided not to make any determinations until we had adopted a final rule after having had a chance to consider comments to the proposed rulemaking. On November 18, 1981, we adopted a final rule and, after approval by the Office of Management and Budget (OMB), we issued it on March 3. 5/

We have received 33 applications on behalf of employees of 13 carriers: Aeroamerica (Dockets 38885 and 38979); Airlift International (Dockets 38418, 40342 and 40352); Air New England (Dockets 40201, 40251, 40349, 40529 and 40530); American Airlines (Dockets 38570 and 39115); Braniff Airways (Dockets 38978 and 40280); Continental Airlines (Dockets 38720, 38816 and 39524); Delta Air Lines (Docket 39700); Eastern Airlines (Docket 38586); Mackey International Airlines (Docket 39783); Overseas National Airways (ONA) (Dockets 34562 and 34711); Pan American World Airways (Dockets 38883 and 40279); Trans World Airlines (TWA) (Dockets 38184, 38193, 38196, 38884, 39013 and 39032); and United Airlines (Dockets 38571, 38882 and 39525). 6/ Since we require only one application per airline to trigger an investigation, we will consolidate into one Docket all applications on behalf of the employees of one particular carrier. Accordingly, for Aeroamerica, Docket 38979 will be consolidated into Docket 38885; for Airlift International Dockets 40342 and 40352 will be consolidated into Docket 38418; for Air New England, Dockets 40251, 40349, 40529 and 40530 will be consolidated into Docket 40201; for American, Docket 39115 will be consolidated into Docket 38570; for Braniff, Docket 40280 will be consolidated into Docket 38978; for Continental, Docket 38816 and 39524 will be consolidated into Docket 38720; for ONA, Docket 34711 will be consolidated into Docket 34562; for Pan Am, Docket 40279 will be consolidated into Docket 38883; for TWA, Dockets 38193, 38196, 38884, 39013 and 39032 will be consolidated into Docket 38184; and for United, Dockets 38882 and 39525 will be consolidated into Docket 38571.

3/ The Employee Protection Program also provides first right-of-hire protection for certain furloughed employees. Although this "Duty to Hire Protected Employees" (section 43(d) of the ADA) is also administered by the Secretary of Labor, it does not require any findings by the Civil Aeronautics Board.

4/ EDR-406/PDR-72, Docket 38483; 45 FR 49291, July 24, 1980.

5/ PR-245, ER-1285, Docket 38483; 47 FR 9744, March 5, 1982. PR-245, concerning the procedures to be used to determine whether a qualifying dislocation has occurred, has an effective date of April 3. ER-1285, concerning regular monthly reporting requirements for carriers, has an effective date of May 3.

6/ The individual employee applicants are listed in Appendix D.

# DRAFT



# DRAFT

MAJOR CONTRACTION FINDINGS

According to the employment data supplied by the Financial and Cost Analysis Division of our Office of Economic Analysis for the period January 1, 1979 through December 31, 1981, 7/ nine of the 13 carriers considered have experienced major contractions 8/ because, since January 1, 1979, each of their reported full-time employment levels has declined 8 percent or more during at least one 12-month period.

We are using an 8-percent figure instead of the 7 1/2 percent figure set forth in the statute. Since we require that carriers report merely the number of employees who have been paid, the reported figures do not enable us to disregard employees terminated for cause, as required by section 43(h)(4) of the ADA. In the final rule, we established a presumption that in most cases the number of terminations for cause would be too small to matter, as follows: We are treating reductions between 7 and 8 percent in already reported employment levels as "close cases," and are requiring additional information about terminations for cause from the employer-carriers before making major contraction findings. 9/ In all other cases, we presume that the number of employees terminated for cause is small enough that it would not affect the outcome. Thus, any carrier showing a full-time employment decline of 8 percent or more during a 12-month period is considered to have experienced a major contraction; and any carrier showing a decline of 7 percent or less is considered not to have experienced a major contraction during that period.

7/ Appendix A. We have not analyzed any employment data since December 1981.

8/ Appendix B contains the time periods during which the major contractions have occurred. We believe that it is important to state when major contractions occurred in order to assist the Department of Labor in determining which furloughed employees will qualify for assistance. (See Appendix C for estimated periods of eligibility.)

9/ Close cases are listed in Appendix B under the "Possible Major Contraction" headings. Because of the overlap with clear cases, resolution of the close ones will at most add one month to the overall period of major contractions for each of four carriers. In some instances, we will not require additional information from carriers for close cases. For example, although Pan Am's full-time employment figures for September 1981 and November 1981 were 7.72 percent less and 7.75 percent less, respectively, than its employment figures for September 1980 and November 1980, these months are contained within other major contraction periods. Accordingly, the additional information that we would normally require for close cases will not be necessary. For Eastern Airlines, however, the only possibility of a major contraction involves a close case, therefore requiring additional information.

DRAFT

# DRAFT

DRAFT

We have not determined whether any of the carrier employers, Aeroamerica and Overseas National Airways (ONA), experienced major contractions. In accordance with sections 314.2 and 314.6 as adopted in PR-245, which reflect the scheme established in section 43 of the ADA, an air carrier cannot have experienced a qualifying dislocation unless on October 24, 1978, the date of enactment of the ADA, it held a certificate issued under section 401 of the Federal Aviation Act of 1958. Since Aeroamerica did not possess such a certificate on October 24, 1978, it could not have suffered a qualifying dislocation even if it had experienced a major contraction. We therefore expect to dismiss the applications in Docket 38885.

We also expect to dismiss the application in Docket 34562 regarding ONA. Section 43(h)(2) of the ADA provides that, for a qualifying dislocation to occur, the bankruptcy or major contraction of the air carrier must take place "during the first ten complete calendar years occurring after the date of enactment of the Airline Deregulation Act," or in other words, between January 1, 1979, and December 31, 1988. Although ONA was not dissolved until 1979, it had voluntarily ceased operations and disposed of its remaining aircraft equipment in September of 1978. <sup>10/</sup> The cessation of operations took place not only prior to the January 1, 1979 threshold date, but also before the ADA was enacted. Therefore, ONA could not have suffered a qualifying dislocation even if it had experienced a bankruptcy or major contraction.

We have examined the employment data for the other 11 carrier employers with regard to possible major contraction occurrences, and we make the following findings:

1) Airlift International

Comparing the full-time employment figure for Airlift in March 1979 with its figures for the following 12 months, we find that Airlift suffered a major contraction in March 1980. Comparing the full-time employment figures for Airlift in October, 1979 through April 1980, with its figures for the next 12 months, respectively, we find that Airlift suffered major contractions during each month from January 1980 through April 1981. <sup>11/</sup> If we also find that these major contractions were

<sup>10/</sup> Order 80-2-23, February 15, 1980, fn. 1.

<sup>11/</sup> There have been no employment figures for Airlift since April 1981. The carrier has been grounded since June 4, 1981. By Order 82-2-127, February 26, 1982, we noted that there was no reasonable likelihood of the carrier's rehabilitation, and directed all interested persons to show cause why we should not revoke its certificate authority for Route 180 to operate between the United States, Brazil and Argentina. We will require the carrier to supply the missing employment data.

DRAFT

DRAFT

DRAFT  
8-1

# DRAFT

qualifying dislocations, a protected employee furloughed by Airlift from March 1979 through April 1981 may be eligible for assistance under the Employee Protection Program. 12/

2) Air New England

Comparing Air New England's full-time employment figures in May, June, July, September and December 1979, February, March, April, July and September 1980 with its figures from the next 12 months, respectively, we find that Air New England suffered major contractions in September and December 1979, January 1980 through July 1980, September 1980 through June 1981, and September 1981. 13/ If we also find that these major contractions were qualifying dislocations, a protected employee furloughed by Air New England from May 1979 through October 1981 14/ may be eligible for assistance under the Employee Protection Program. (See fn. 12.) 15/

12/ See Appendix C. Note, however, that we will ordinarily make only one qualifying dislocation determination in a 12-month period. Therefore, within the 12-month period following the occurrence of a qualifying dislocation, any major contraction that occurs will be announced to be a qualifying dislocation without our embarking on a full investigation to determine its major cause. It will then be the Department of Labor's responsibility to determine whether an individual employee was an eligible protected employee as set forth in section 43(a)(1) of the Airline Deregulation Act. (To be a protected employee, section 43(h)(1) of the ADA requires that the employee have been employed by a certificated carrier as of the date of enactment of the ADA, October 24, 1978, for four years prior to the date of enactment, that is, since October 24, 1974.)

13/ We do not have full-time employment figures for January, February, April, October, November 1979, or October 1981. By notice filed October 22, 1981, Air New England informed us that it was ceasing all operations and suspending all of its services as a certificated air carrier effective October 31, 1981. By Order 81-11-112, November 17, 1981, we allowed it to suspend services on October 31, 1981. We will require the carrier to supply the missing employment data.

14/ A skeleton crew may have been retained for a short period of time following the cessation of operations on October 31, 1981. Those employees, if subsequently furloughed, may also be eligible for assistance.

15/ Even though there were no major contractions in October and November 1979, August 1980 (a close case), and July and August 1981, those months were contained within other major contraction periods. Therefore, any protected employee furloughed during those months may still be eligible for assistance. Employment data reveal similar occurrences at Pan Am, TWA and United.

DRAFT

# DRAFT

DRAFT  
9

# DRAFT

### 3) American

Comparing the full-time employment figures for American from December 1979 through October 1980 with its figures for the next 12 months, respectively, we find that American suffered major contractions from December 1980 through October 1981. If we also find that these major contractions were qualifying dislocations, a protected employee furloughed by American from December 1979 through October 1981 may be eligible for assistance under the Employee Protection Program. (See fn. 12.)

However, we cannot yet make a finding that American also experienced a major contraction in November 1980 based upon its November 1979 employment level. Its full-time employment figure for November 1980 was 7.64 percent less than it was for November 1979. Since we view this as a close case, we will require additional data from the carrier. 16/

### 4) Braniff

Comparing Braniff's full-time employment figures from September 1979 through December 1980 with its figures for the next 12 months, respectively, we find that Braniff suffered major contractions from September 1980 through December 1981. If we also find that these major contractions were qualifying dislocations, a protected employee furloughed by Braniff from September 1979 through December 1981 may be eligible for assistance under the Employee Protection Program. (See fn. 12.)

### 5) Continental

Comparing the full-time employment figures for Continental from November 1979 through April 1980 with its figures from the next 12 months, respectively, we find that Continental suffered major contractions from November 1980 through April 1981. If we also find that these major contractions were qualifying dislocations, a protected employee furloughed by Continental from November 1979 through April 1981 may be eligible for assistance under the Employee Protection Program. (see fn. 12.)

However, we cannot yet make a finding that Continental also experienced a major contraction in October 1980 based upon its October 1979 employment level. Its full-time employment figure for October 1980 was 7.27 percent less than it was for October 1979. Since we view this as a close case, we will require additional data from the carrier. 17/

16/ If we find a major contraction in November 1980, there will be an overlap with the December 1980 major contraction with regard to possible eligibility for assistance for employees furloughed in all months except November 1979.

17/ If we find a major contraction in October 1980, there will be an overlap with the November 1980 contraction with regard to possible eligibility for assistance for employees furloughed in all months except October 1979.

DRAFT

# DRAFT

DRAFT  
101

# DRAFT

6) Delta

Based upon our employment data through December 1981, we find that Delta has not experienced a major contraction. We therefore expect to dismiss the application in Docket 39700.

7) Eastern

Based upon our employment data through December 1981, we cannot yet make a finding that Eastern experienced a major contraction. Its full-time employment figure for December 1981, however, was 7.07 percent less than it was for January 1981. Since we view this as a close case, we will require additional data from the carrier.

8) Mackey International

The only full-time employment figures that we have for Mackey are from January 1981 through August 1981. <sup>18/</sup> Based upon those figures, Mackey suffered major contractions from March 1981 through August 1981. If we also find that these major contractions were qualifying dislocations, a protected employee furloughed by Mackey from January 1981 through August 1981 may be eligible for assistance under the Employee Protection Program. (see fn. 12.)

9) Pan American

Comparing Pan Am's full time employment figures from November 1979 through May 1981 with those of the next 12 months, respectively, (up to December 1981), we find that Pan Am suffered major contractions from November 1980 through August 1981, as well as in October and December 1981. (see fn. 8.) If we also find that these major contractions were qualifying dislocations, a protected employee furloughed by Pan Am from November 1979 through December 1981 may be eligible for assistance under the Employee Protection Program. (see fn. 12 and fn. 15.)

However, we cannot yet make a finding that Pan Am also experienced a major contraction in October 1980 based upon its October 1979 employment level. Its full-time employment figure for October 1980 was 7.77 percent less than the combined full-time employment figures of Pan Am and National for October 1979. (see Appendix B, fn. 2.) Since we view this as a close case, we will require additional data from the carrier. <sup>19/</sup>

<sup>18/</sup> Mackey terminated its business operations in October 1981 (Mackey International Fitness Investigation, Docket 39731, Initial Decision of Administrative Law Judge John M. Vittone, p. 10). We will, however, require that Mackey supply the missing employment data.

<sup>19/</sup> If we find a major contraction in October 1980, there will be an overlap with the November 1980 major contraction with regard to possible eligibility for assistance for employees furloughed in October 1979.

DRAFT

# DRAFT

DRAFT  
DRAFT  
11

10) TWA

Comparing TWA's full-time employment figures in April, July, August, and September 1979, October, November and December 1980 with those of the following 12 months, respectively, we find that TWA suffered major contractions in each month from October 1979 through September 1980, and October, November and December 1981. If we also find that these major contractions were qualifying dislocations, a protected employee furloughed by TWA from April 1979 through December 1981 may be eligible for assistance under the Employee Protection Program. (see fn. 11 and fn. 15.)

However, we cannot yet make a finding that TWA also experienced a major contraction in February 1980 or March 1980 based upon its March 1979 employment level. Its full-time employment figures for February 1980 and March 1980 were 7.71 percent less and 7.31 percent less, respectively, than its employment figure for March 1979. Since we view this as a close case, we will require additional data from the carrier. 20/

11) United

Comparing United's full-time employment figures in September, October, November and December 1979, January, November and December 1980 with its figures from the next 12 months, respectively, we find that United suffered major contractions in September, October, November and December 1980, January, November and December 1981. If we also find that these major contractions were qualifying dislocations, a protected employee furloughed by United from September 1979 through December 1981 may be eligible for assistance under the Employee Protection Program. (see fn. 12 and fn. 15.)

ANSWERS

We will serve a copy of each application upon the persons listed in section 314.11(c) of our final rule — the employer-carrier of the applicant, the collective bargaining representatives of that carrier's employees, the Secretary of Labor, the Secretary of Transportation, and any State agencies that are acting as agents of the Secretary of Labor to administer the Employee Protection Program.

20/ If we find a major contraction in February 1980 or March 1980, there will be an overlap with the April 1980 major contraction with regard to possible eligibility for assistance for employees furloughed in all months except March 1979.

DRAFT

DRAFT

# DRAFT

- 12 -

Persons filing answers may address our major contraction findings, discussed above. In cases where we find that a carrier has experienced a major contraction, however, we expect answers to focus on whether the major contraction amounted to a qualifying dislocation. Answers should therefore state whether the major cause of the major contraction was the change in regulatory structure provided by the ADA and include any information and arguments that support this conclusion. We did not define "the major cause" in the final rule. We stated instead that our interpretation of this phrase would evolve as we gained experience with actual cases involving specific carriers and employees. Persons filing answers need not restate arguments made in their comments to our proposed rulemaking, but we encourage them to provide as specific information as possible on the question of causation. Interested persons should file answers by Docket and carrier as set forth in Ordering Paragraphs 3 and 4 below.

Section 314.12 of our final rule provides that answers be filed within 15 days after the service date of an application. However, because this is the first order concerning the Employee Protection Program, and because we are asking interested persons to provide answers on a complex subject, we will allow additional time for answers. Therefore, any person may file an answer within 60 days after the service date of this order. 21/

ACCORDINGLY,

1. We consolidate the following Dockets: Docket 38979 into Docket 38885; Dockets 40342 and 40352 into Docket 38418; Dockets 40251, 40349, 40529 and 40530 into Docket 40201; Docket 39115 into Docket 38570; Docket 40280 into Docket 38978; Dockets 38816 and 39524 into Docket 38720; Docket 34711 into Docket 34562; Docket 40279 into Docket 38883; Dockets 38193, 38196, 38884, 39013 and 39032 into Docket 38184; and Dockets 38882 and 39525 into Docket 38571;

2. We find that Airlift International, Air New England, American, Braniff, Continental, Mackey International, Pan Am, TWA and United experienced major contractions for the periods set forth in this order;

3. We institute the following individual investigations to determine whether carriers that have experienced major contractions or bankruptcies have also suffered qualifying dislocations:

- (a) Airlift International Employee Protection Program Investigation - Docket 38418;
- (b) Air New England Employee Protection Program Investigation - Docket 40201;

21/ We have already received an answer from Eastern Airlines concerning the application in Docket 38586 and an answer from Delta Air Lines concerning the application in Docket 38700.

# DRAFT

DRAFT

- (c) American Airlines Employee Protection Program Investigation - Docket 38570;
- (d) Braniff International Airways Employee Protection Program Investigation - Docket 38978;
- (e) Continental Airlines Employee Protection Program Investigation - Docket 38720;
- (f) Mackey International Airlines Employee Protection Program Investigation - Docket 39783;
- (g) Pan American World Airways Employee Protection Program Investigation - Docket 38883;
- (h) Trans World Airlines Employee Protection Program Investigation - Docket 38184; and
- (i) United Airlines Employee Protection Program Investigation - Docket 38571;

4. Answers in those cases for which an investigation has not been instituted shall be filed by Docket and carrier as follows:

- (a) Major Contraction Determination of Aeroamerica - Docket 38885;
- (b) Major Contraction Determination of Delta Air Lines - Docket 39700;
- (c) Major Contraction Determination of Eastern Airlines - Docket 38586; and
- (d) Major Contraction Determination of Overseas National Airways - Docket 34562;

5. We will serve a copy of each "Application for Determination of Qualifying Dislocation" upon the air carrier employer of the applicant, upon each collective bargaining representative of employees of the carrier, upon the Secretary of Labor, upon the Secretary of Transportation, and upon any State agencies that are acting as agents of the Secretary of Labor to administer the Employee Protection Program;

6. Answers to the applications and our findings, shall be due no later than , 1982;

7. We direct Airlift International to file in Docket 38418 no later than , 1982, its full-time employee figures for each month since April 1981;

DRAFT

DRAFT



DRAFT

8. We direct Air New England to file in Docket 40201 no later than , 1982, its full-time employment figures for January, February, April, October and November 1979, and October through December 1981;

9. We direct American Airlines to file in Docket 38570 no later than , 1982, the number of full-time employee positions that were vacant as a result of terminations for cause, for each of the pay periods nearest November 15, 1979, and November 15, 1980;

10. We direct Continental Airlines to file in Docket 38720 no later than , 1982, the number of full-time employee positions that were vacant as a result of terminations for cause, for each of the pay periods nearest October 15, 1979, and October 15, 1980;

11. We direct Eastern Airlines to file in Docket 38586 no later than , 1982, the number of full-time employee positions that were vacant as a result of terminations for cause, for each of the pay periods nearest January 15, 1981, and December 15, 1981;

12. We direct Mackey International Airlines to file in Docket 39783 no later than , 1982, its full-time employment figures for each month in 1979 and 1980, and for each month since August 1981;

13. We direct Pan American World Airways to file in Docket 38883 no later than , 1982, the number of full-time employee positions that were vacant as a result of terminations for cause, for each of the pay periods nearest October 15, 1979, and October 15, 1980; and

14. We direct Trans World Airlines to file in Docket 38184 no later than , 1982, the number of full-time employee positions that were vacant as a result of terminations for cause, for each of the pay periods nearest March 15, 1979, February 15, 1980, March 15, 1980, October 15, 1979, and October 15, 1980.

We will publish this order in the Federal Register.

By the Civil Aeronautics Board:

PHILLIS T. KAYLOR

Secretary

(SEAL)

DRAFT

DRAFT

FULL-TIME EMPLOYEES

Month/Year	Airline Int'l 1/	Air New England 3/	American	Braniff	Continental	Delta	Eastern	Mackey Int'l 3/	National 2/	Pan American 2/	Trans World	United 1/
January 1979	902		36,807	13,554	11,568	33,608	35,887		8,406	26,428	35,168	50,620
February 1979	902		36,934	13,806	11,589	33,670	35,853		8,373	26,371	35,367	50,794
March 1979	910	519	37,113	14,002	11,623	34,240	35,917		8,381	26,694	36,002	51,098
April 1979	890		37,431	14,269	11,669	34,439	35,926		8,342	26,700	36,878	51,276
May 1979	885	630	38,031	14,579	11,725	34,901	35,928		8,441	26,893	37,649	51,384 1/
June 1979	915	629	38,712	14,661	11,887	35,664	36,204		8,024	27,302	38,191	51,408 1/
July 1979	906	671	39,248	14,918	12,230	35,758	36,808		8,382	27,528	38,202	51,266
August 1979	909	665	40,703	14,932	11,992	35,599	37,287		8,461	27,828	37,511	51,375
September 1979	940	601	39,419	14,731	12,028	34,963	37,452		8,431	27,816	36,088	51,489
October 1979	953		39,278	14,762	12,123	35,290	37,662		8,449	27,796	35,139	51,618
November 1979	914		39,251	14,788	11,984	35,728	37,992		8,427	27,532	33,763	51,623
December 1979	878	550	39,337	14,783	11,983	35,290	38,206		8,427	27,479	33,633	51,543
January 1980	851	546	39,395	14,714	11,893	35,271	38,433		8,427	27,613	33,485	51,368
February 1980	842	547	39,309	14,640	11,812	35,262	38,365			35,877	33,225	51,016
March 1980	783	540	39,272	14,622	11,710	36,196	38,438			35,780	33,371	50,464
April 1980	665	538	39,115	14,676	11,648	35,386	38,688			35,785	33,571	50,247
May 1980	586	540	39,466	14,614	11,713	35,588	38,815			35,754	33,338	49,653
June 1980	398	559	39,601	14,546	11,698	35,967	38,931			35,637	33,346	49,501
July 1980	407	615	39,448	14,446	11,809	35,915	39,262			35,910	33,252	49,407
August 1980	435	615	39,550	14,321	11,674	35,753	39,361			35,400	33,114	49,028
September 1980	410	514	39,418	13,081	11,455	35,543	39,248			34,626	32,710	47,204
October 1980	412	470	37,466	12,560	11,242	35,784	39,228			33,430	32,624	47,133
November 1980	399	476	36,255	12,150	10,953	35,884	39,961			32,441	32,163	47,037
December 1980	403	501	36,091	12,092	9,857	36,081	39,875			31,914	31,900	46,910
January 1981	401	503	35,974	11,652	10,040	35,868	40,179	43		32,044	31,800	47,088
February 1981	375	500	35,004	11,460	10,104	35,874	39,480	41		31,772	31,752	47,040
March 1981	335	497	34,662	11,273	10,243	36,032	39,283	32		31,844	31,819	46,937
April 1981	347	494	34,523	11,350	10,386	36,153	39,122	24		31,984	31,773	46,812
May 1981		554	34,786	11,494	11,296	36,311	39,068	25		32,703	31,824	46,684
June 1981		554	35,276	11,663	11,160	36,860	39,166	25		32,795	32,114	46,024
July 1981		589	35,661	11,754	11,484	36,967	39,137	27		32,707	31,813	45,849
August 1981		589	35,596	10,845	11,436	36,561	39,199	28		32,555	31,625	45,604
September 1981	404		34,608	10,796	11,485	35,881	38,805			31,954	30,416	45,286
October 1981			34,213	10,724	11,520	35,850	37,519			30,669	29,581	43,753
November 1981			34,109	10,667	11,112	35,779	37,429			29,927	29,329	42,768
December 1981			34,080	10,661	11,008	35,747	37,337			30,013	29,039	42,614

- 1/ Due to strike, operations were suspended for United from March 31, 1979 to May 28, 1979. Although United was on full strike, little if any change was made in the number of reported employees. This would appear to represent incorrect reporting.
- 2/ Effective February 1980, National Airlines data was included with Pan American for reporting purposes. For purposes of determining major contractions, National and Pan American data for 1979 and January 1980 have been combined.
- 3/ The carrier has not provided the Board with all its full-time employment data.

INFORMATION WILL, IF REQUIRED

Carrier	Beginning of 12-month Calculation Period For Major Contraction	Occurrence of Major Contraction	Beginning of 12-month Calculation Period For Possible Occur of Major Contraction	Possible Occurrence of Major Contraction
Airlift International	a) March 1979 b) October 1979 through April 1980	a) March 1980 b) January 1980 through April 1981		
Air New England	a) May 1979 b) July 1979 c) September 1979 d) December 1979 e) February 1980 through April 1980 f) April 1980 g) June 1980 h) July 1980 i) September 1980	a) December 1979 b) September 1979, January 1980 through July 1980 c) September 1980 d) October 1980 through December 1980 e) January 1981 and February 1981 f) April 1981 g) March 1981 h) May 1981 and June 1981 i) September 1981		
American	a) December 1979 through October 1980	a) November 1980 through October 1981	a) November 1979	a) November 1980
Brantiff	a) September 1979 through December 1980	a) September 1980 through December 1981		
Continental	a) November 1979 through April 1980	a) November 1980 through April 1981	a) October 1979	a) October 1980
Eastern			a) January 1981	a) December 1981
Hockey International	a) January 1981	a) March 1981 through August 1981		
Pan Am	a) November 1979 through August 1980 b) October 1980 c) May 1981	a) November 1980 through August 1981 b) October 1981 c) November 1981 and December 1981	a) October 1979	a) October 1980
TWA	a) April 1979 b) July 1979 through September 1979 c) October 1980 through December 1980	a) November 1979 through April 1980 b) October 1979 through September 1980 c) October 1981 through December 1981	a) March 1979 b) October 1979	a) February 1980 or March 1980 b) October 1980
United	a) September 1979 through January 1980 b) November 1980 and December 1980	a) September 1980 through January 1981 b) November 1981 and December 1981		

ESTIMATED PERIODS OF ELIGIBILITY FOR PROTECTED EMPLOYEES  
IF MAJOR CONTRACTIONS ARE DETERMINED TO BE QUALIFYING DISLOCATIONS 1/

Airlift International

March 1979 - April 1981 2/

Air New England

May 1979 - October 1981 3/

American

December 1979 - October 1981  
(November 1979 is part of a  
close case.)

Braniff

September 1979 - December 1981

Continental

November 1979 - April 1981  
(October 1979 is part of a  
close case.)

Eastern

The period from January 1981 -  
December 1981 is a close case.

Mackey International

March 1981 - August 1981 4/

Pan American

November 1979 - December 1981  
(October 1979 is part of a  
close case.)

TWA

April 1979 - December 1981  
(March 1979 is part of a close  
case.)

United

September 1979 - December 1981

1/ Each qualifying dislocation determination will ordinarily be good for 12 months. Therefore, if a major contraction is found for any period within the 12 months after a month for which there was a qualifying dislocation determination, that major contraction would also be announced as being a qualifying dislocation, i.e., we would not embark on a full investigation to identify its major cause. It will then be the Department of Labor's responsibility to determine whether an individual employee was an eligible protected employee as set forth in section 43(a)(1) of the Deregulation Act.

2/ We do not have employment information after April 1981.

3/ We do not have complete employment data concerning this carrier. In addition, a skeleton crew may have been retained for a short period of time following the cessation of operations on October 31, 1981. Those employees, if subsequently furloughed, may also be eligible for assistance.

4/ We do not have employment information for 1979, 1980 or after August 1981.

INDIVIDUAL EMPLOYEE APPLICANTS

- a) Captain Don Vanderhule (Docket 38885) and Captain Robert F. Morrison (Docket 38979) of Aeroamerica;
- b) Mr. Nihal B. Perera (Docket 38418), Mr. Floyd E. Bramlett (Docket 40342), and Association of Flight Attendants, representing 25 named employees (Docket 40352) of Airlift International;
- c) Air Line Pilots Association, representing 71 named employees and Association of Flight Attendants representing 9 named employees (Docket 40201), Mr. Hobart N. Crocker, Jr. (Docket 40251), H. Grady Gatlin, Jr. Esq., representing 42 named employees (Docket 40349), Captain Paul F. McDonald (Docket 40529), and Mr. Howard Elkins (Docket 40530) of Air New England;
- d) Mr. John R. Greto (Docket 38570) and Mr. John M. Schlee (Docket 39115) of American Airlines;
- e) Mr. Jerry W. Dobben on behalf of 6 named employees (Docket 38978) and Ms. Elizabeth Sheppard on behalf of 29 named employees (Docket 40280) of Braniff International Airways;
- f) Ms. Irene L. Baehr (Docket 38720), Mr. William M. Kennedy (Docket 38816) and Mr. Dennis J. Griener (Docket 39524) of Continental Airlines;
- g) Mr. Robert Rubino (Docket 39700) of Delta Air Lines;
- h) Ms. Mary Nicholson (Docket 38586) of Eastern Airlines;
- i) Mr. Ronald A. Frawley on behalf of 27 named employees (Docket 39783) of Mackey International Airlines;
- j) The Association of Flight Attendants (Dockets 34562 and 34711) representing employees of Overseas National Airways;
- k) Mr. Jerry Snider (Docket 38883) and Mr. Ted I. Hodge (Docket 40279) of Pan American World Airways;
- l) Mr. Joseph A. Sergio (Docket 38184), Mr. Anton Nichols, Jr. (Docket 38193), Mr. James L. Mumford (Docket 38196), Mrs. Helen E. Litvak (Docket 38884), Mr. Ralph W. Evans (Docket 39013), and Mr. Edward A. Wallace (Docket 39032) of Trans World Airlines; and
- m) Mr. Garry J. Dobecki (Docket 38571), Mr. Thomas G. Macaluso (Docket 38882), and Mr. Larry Kent Smith (Docket 39525) of United Airlines.

CIVIL AERONAUTICS BOARD

MEMORANDUM  
MAY 17 82 501-B  
REC'D MINUTES SEC

MEMORANDUM

May 17, 1982

TO : The Board

FROM : Director, Bureau of Domestic Aviation

SUBJECT : Employee Protection Program: Applications on behalf of various airlines in various Dockets for Determination of Disqualifying Dislocation under section 43 of the Airline Deregulation Act-- Draft order.

REFERENCE: Item #20, MBA#501A, May 14, 1982.

We have added a footnote to page 9 of the draft order to reflect the status of protected employees of Braniff who were furloughed because of its decision to file for bankruptcy. This has necessitated a revised page 9, which is attached.

*Joseph Bolognesi*  
Joseph Bolognesi B-72  
Ext. 35333

Attachment

Approved:

*Barbara A. Clark*  
Director, BDA

5-17-82  
Date

DRAFT

3) American

Comparing the full-time employment figures for American from December 1979 through October 1980 with its figures for the next 12 months, respectively, we find that American suffered major contractions from December 1980 through October 1981. If we also find that these major contractions were qualifying dislocations, a protected employee furloughed by American from December 1979 through October 1981 may be eligible for assistance under the Employee Protection Program. (See fn. 12.)

However, we cannot yet make a finding that American also experienced a major contraction in November 1980 based upon its November 1979 employment level. Its full-time employment figure for November 1980 was 7.64 percent less than it was for November 1979. Since we view this as a close case, we will require additional data from the carrier. 16/

4) Braniff

Comparing Braniff's full-time employment figures from September 1979 through December 1980 with its figures for the next 12 months, respectively, we find that Braniff suffered major contractions from September 1980 through December 1981. If we also find that these major contractions were qualifying dislocations, a protected employee furloughed by Braniff from September 1979 through December 1981 may be eligible for assistance under the Employee Protection Program. (See fn. 12.) 16a/

5) Continental

Comparing the full-time employment figures for Continental from November 1979 through April 1980 with its figures from the next 12 months, respectively, we find that Continental suffered major contractions from November 1980 through April 1981. If we also find that these major contractions were qualifying dislocations, a protected employee furloughed by Continental from November 1979 through April 1981 may be eligible for assistance under the Employee Protection Program. (see fn. 12.)

However, we cannot yet make a finding that Continental also experienced a major contraction in October 1980 based upon its October 1979 employment level. Its full-time employment figure for October 1980 was 7.27 percent less than it was for October 1979. Since we view this as a close case, we will require additional data from the carrier. 17/

16/ If we find a major contraction in November 1980, there will be an overlap with the December 1980 major contraction with regard to possible eligibility for assistance for employees furloughed in all months except November 1979.

16a/ Since a determination of qualifying dislocation is good for 12 months (see footnote 12) employees of Braniff who were furloughed in May 1982 as a result of the carrier's decision to file for bankruptcy would still be covered by any determination of qualifying dislocation of the carrier from May through December 1981.

17/ If we find a major contraction in October 1980, there will be an overlap with the November 1980 contraction with regard to possible eligibility for assistance for employees furloughed in all months except October 1979.

DRAFT